



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

██████████
Docket No. 1966-23
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF FORMER ██████████, USN,
██████████

Ref: (a) 10 U.S.C. § 1552
(b) 10 U.S.C. § 1201
(c) DODI 1332.18, Disability Evaluation System (DES), 5 August 2014
(d) SECNAVINST 1850.4E, Department of the Navy (DON) Disability Evaluation Manual, 30 April 2002
(e) SECNAVINST 1920.6D, Administrative Separation of Officers, 24 July 2019
(f) OPNAVINST 1120.8A, Appointment of Regular and Reserve Officers in the Medical Service Corps of the Navy

Encl: (1) Complaint, in the case of *[Petitioner] vs. United States of America*, in the United States Court of Federal Claims, Case N ██████████
(2) Order, in the case of *[Petitioner] v. United States*, in the United States Court of Federal Claims, Case N ██████████
(3) DD Form 149 w/attachments
(4) NAVPERS 1000/4, Officer Appointment and Acceptance of Oath, 6 May 13
(5) ██████████ Memo 6000 Ser.ADMIN/110, subj: Non-Medical Assessment (NMA) in the case of [Petitioner], 10 August 2018
(6) Petitioner's Memo, subj: Personal Statement in Support of Medical Board, 7 August 2018
(7) ██████████ Letter (S.R., MD, Psychiatrist), subj: Medical update letter for [Petitioner], 13 September 2018
(8) IDES Legal Consultation and IDES Enrollment
(9) ██████████, ██████████ Consolidated Narrative Summary, 21 July 2018
(10) Findings of the Physical Evaluation Board Proceedings (Informal), printed 4 September 2018
(11) DES Informal PEB Election of Options, 24 September 2018
(12) Petitioner's Memo 1850, subj: Requests for Reconsideration and Formal Physical Evaluation Board, 24 September 2018
(13) ██████████ Letter (S.P. PsyD, Clinical Psychologist), subj: Medical Evaluation Board Memorandum, 12 September 2018
(14) ██████████ Memo, subj: [Petitioner], 24 September 2018
(15) IDES FIT FPEB Request, 3 October 2018
(16) Secretary of the Navy Council of Review Boards Memo 1850 PEB Index ██████████, subj: Notification of Decision, 22 October 2018
(17) ██████████ Brigade Commander Memo 1920 ADMIN, subj: Administrative Separation ICO [Petitioner], 17 January 2019

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- (18) [REDACTED] Brigade Commander Memo 1920 ADMIN, subj: Acknowledgement of Adverse Letter, 17 January 2019
- (19) Petitioner's Memo, subj: Statement Regarding Administrative Separation Letter, 18 January 2019
- (20) [REDACTED] President Memo 1301 Ser Admin, First Endorsement on Enclosure (17), subj: Administrative Separation ICO [Petitioner], 22 January 2019
- (21) BUPERS Memo 1920 BUPERS-00B/303, subj: Administrative Separation ICO [Petitioner], 2 July 2019
- (22) DD Form 214
- (23) Department of Veterans Affairs Rating Decision, 23 October 2019
- (24) Secretary of the Navy Council of Review Boards Memo 1910 CORB: 002, subj: Request for Comments and Recommendations ICO [Petitioner], 20 April 2023
- (25) Secretary of the Navy Council of Review Boards Memo 1910 CORB: 001, First Endorsement on Enclosure (24), subj: Request for Comments and Recommendations ICO [Petitioner], 24 April 2023

1. On [REDACTED] the Subject, hereinafter referred to as the Petitioner, filed enclosure (1) with the United States Court of Federal Claims (COFC), claiming that the Department of the Navy unlawfully denied her a medical retirement despite her duty-limiting, unspecified anxiety disorder, thus depriving her of retired pay and benefits.¹ On 30 January 2023, the Government filed a motion to remand Petitioner's case to the Board for Correction of Naval Records, hereinafter referred to as the Board, and the COFC granted that motion on 9 February 2023.² The COFC specifically directed the Board to "address, among other issues, whether [Petitioner's] anxiety, or any other issues rendered her unfit for continued service due to disability," and to consider reference (c) as well as any other applicable statutes, regulations, and instructions to reach a decision on remand. See enclosure (2). On 10 March 2023, Petitioner filed enclosure (3) with the Board in accordance with reference (a) and the Order of the COFC at enclosure (2), requesting that her naval record be corrected to reflect her eligibility for a medical retirement.³

2. The Board reviewed Petitioner's allegations of error or injustice on 28 April 2023 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on Petitioner's naval record. Documentary material considered by the Board included the

¹ Petitioner alleged that the Physical Evaluation Board (PEB) finding that she was fit for duty was arbitrary, capricious, unsupported by substantial evidence and contrary to law, because it applied the wrong legal standard for determining medical fitness. Specifically, she asserted that the PEB failed to properly assess whether Petitioner's unspecified anxiety disorder rendered her unable to reasonably perform the duties of her grade, rank, or rating as a Medical Corps officer, by improperly basing its fitness determination upon her perceived ability to perform the duties of a Medical Service Corps officer, in violation of references (c) and (d); failing to apply the three fitness criteria of reference (c); and failing to address whether, as a result of her unspecified anxiety disorder, she could perform the common tasks of her office, grade, rank, or rating.

² Petitioner had not previously sought this relief from the Board before seeking relief through the COFC.

³ Petitioner specifically asked that her DD Form 214 be changed "to reflect military retirement and to show that [Petitioner] was UNFIT when the PEB reviewed her information because her condition prevented her from performing the duties of her office, grade, rank, or rating, she was a risk to herself/others, and/or she would have placed an undue burden on the Navy, and that she should have been awarded disability retirement as evidenced by her 70% VA rating."

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enclosures, relevant portions of Petitioner's naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or injustice, finds as follows:

a. Petitioner was appointed an Ensign in the United States Navy on 7 May 2013. See enclosure (4).

b. In August 2013, Petitioner enrolled in the Uniformed Services University of the Health Sciences (USUHS) medical school, with an expected graduation date in May 2017. Despite early success in the pre-clerkship phase of her training, Petitioner encountered difficulties during the clinical clerkship phase of her education. As she explained to the PEB, she "began suffering from extreme levels of anxiety and panic attacks several times per day [when she began clinical rotations], usually revolving around giving oral case presentations and answering questions when 'put on the spot' in the clinical setting." Her extreme level of anxiety inhibited Petitioner from demonstrating her knowledge. She was placed on academic probation, and was eventually afforded the opportunity to remediate her remaining graduation requirements by repeating her fourth year of medical school. See enclosures (5) and (6).

c. Petitioner began receiving behavioral health treatment in July 2015 due to the intense anxiety symptoms that she was experiencing during clinical rounds as a third-year medical student. Her mental health provider explained that "[d]uring rounds [Petitioner] experienced overwhelming anxiety with heart palpitations then her mind would go blank, she would freeze up, and this would often lead to crying episodes." She was diagnosed and treated for a Generalized Anxiety Disorder, but neither intensive outpatient treatment nor individual therapy provided more than a minimal benefit. See enclosure (7).

d. In November 2017, Petitioner was informed that she failed the mandatory "Bushmaster Course."⁴ See enclosure (7).

e. In December 2017, Petitioner appeared before the [REDACTED] Student Promotions Committee, and in January 2018 she was informed that the committee was recommending her disenrollment from the medical school. This recommendation was reportedly based upon her inability to fulfill military requirements, including being unable to deploy, not being worldwide assignable, and having no future potential of becoming worldwide assignable. See enclosure (7).

f. On 27 March 2018, Petitioner resigned and was disenrolled from the [REDACTED] medical school. After her resignation from the medical school, she contributed as a research assistant involved in multiple research projects at [REDACTED]. See enclosure (5).

⁴ Per enclosure (12), this was the capstone military medicine exercise, in which fourth year students must run a medical platoon in a simulated combat zone. Petitioner reported that her primary reason for failure of this event was a panic attack that occurred at the beginning of an evolution when she was thrown into an unfamiliar role and did not know what to do.

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g. Petitioner was subsequently referred to the Integrated Disability Evaluation System (IDES) so that the PEB could evaluate her fitness for continued military service. See enclosure (8).

h. On 26 June 2018, the Medical Evaluation Board (MEB) diagnosed Petitioner with an Unspecified Anxiety Disorder, with sleep impairment and panic attacks. Her disorder was reportedly manifested by intense physiological hyperarousal (tachycardia, chest tightness, flushing muscle tension), anxiousness, and cognitive disruption (short term memory laps, decreased retrieval efficiency, freeze response). The MEB assessed that this condition was not likely to improve sufficiently to allow Petitioner to return to full duty in her office, grade, rank, or rating within 12 months. See enclosure (9).

i. By memorandum dated 18 August 2018, Petitioner's commander provided a non-medical assessment (NMA) of the impact of Petitioner's condition upon her ability to perform her duties. This assessment provided that Petitioner's medical condition limited her ability to perform the essential functions required of a U.S. Navy Medical Corps officer. While she was able to perform low acuity clinical work in a controlled setting, her skill set was not compatible with the readiness mission of Navy Medicine. He further opined that, while Petitioner had the ability and intelligence to complete the classroom/academic aspects of being a medical student, she could not adequately apply these capabilities in a clinical setting in a high stress environment, and therefore would not be a candidate for worldwide deployability. See enclosure (5).

j. On 4 September 2018, an informal PEB (IPEB), by a vote of 2-1, found that Petitioner was medically fit to continue on active duty. In making this finding, the Medical Officer on the PEB noted that the NMA reflected that Petitioner was "suitable for administrative and research duties," and could "be assigned as [a] medical service corps [officer]." The Line Officer voting with the Medical Officer concurred with this assessment, stating that "[w]hile the [Petitioner] may not be able to meet the requirements to successfully serve in the Medical Corps as a medical doctor, she should be given the opportunity to satisfy her service obligation in another capacity, potentially as a Medical Service Corps officer." The Presiding Officer provided the dissenting vote, noting that Petitioner's anxiety disorder limited her ability to perform the essential functions required of members of the Navy Medical Corps, that this condition was not likely to improve, and that it prevented Petitioner from serving in any operational capacity or being assigned worldwide.⁵ See enclosure (10).

k. On 24 September 2018, Petitioner elected not to accept the findings of the IPEB, and requested a formal PEB (FPEB) hearing to contest her fitness determination.⁶ See enclosure (11).

l. On 2 October 2018, the PEB President concurred with the IPEB finding after reviewing Petitioner's new information, and denied her request for a FPEB. See enclosure (15).

⁵ The Presiding Officer's findings relied largely upon the NMA comments.

⁶ This request for a FPEB hearing was supported by a separate memorandum from the Petitioner detailing her condition and level of impairment (Enclosure (12)); a letter from her treating psychiatrist (Enclosure (7)); the professional opinion of a clinical psychologist regarding Petitioner's fitness for duty (Enclosure (13)); and a letter from the [REDACTED] Assistant Dean for Clinical Sciences (Enclosure (14)).

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m. By memorandum dated 22 October 2018, the PEB issued its official notification of decision, announcing that Petitioner had been found medically fit for continued service. See enclosure (16).

n. By memorandum dated 17 January 2019, the [REDACTED] Brigade Commander requested that Petitioner be administratively separated from the Navy in accordance with reference (e) due to failure to complete a course of instruction. See enclosure (17).

o. By memorandum also dated 17 January 2019, Petitioner was notified of her right to submit comments regarding the Brigade Commander's request that she be administratively separated from the Navy. Petitioner acknowledged receipt of this notification on the same day, and indicated her intent to make a statement. See enclosure (18).

p. By memorandum dated 18 January 2019, Petitioner submitted a statement for consideration in response to the request for her administrative separation. In this statement, she reiterated her anxiety-related symptoms and their impact upon her ability to perform her duties. She also questioned the reasoning of the IPEB, noting that she is not a candidate for transfer to the Medical Service Corps (MSC) due to her lack of qualifying education. Accordingly, she requested an administrative separation with an honorable discharge in order to pursue a path forward in life as a civilian. See enclosure (19).

q. By letter dated 22 January 2019, the [REDACTED] President endorsed the Brigade Commander's request for Petitioner's administrative separation from the Navy due to her failure to complete a course of instruction. See enclosure (20).

r. On 9 May 2019, Petitioner submitted a qualified resignation request. See enclosure (21).

s. By memorandum dated 2 July 2019, the Deputy Chief of Naval Personnel (DCNP) recommended that the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)) accept Petitioner's qualified resignation request and separate her from the Navy with an honorable characterization of service for failure to complete a course of instruction. The DCNP also recommended the recoupment of Petitioner's community managed bonuses.⁷ See enclosure (21).

t. By signature dated 15 July 2019, the ASN (M&RA) approved the DCNP's recommendation, directing Petitioner's separation from the Navy with an honorable characterization of service for failure to complete a course of instruction.

u. On 30 September 2019, Petitioner was honorably discharged from the Navy pursuant to the ASN (M&RA)'s approval of her qualified resignation. The narrative reason for her separation stated on her DD Form 214 was "Failure to Complete a Course of Instruction." See enclosure (22).

⁷ The pro rata cost of Petitioner's educational costs under the Health Professions Scholarship Program was estimated at \$267,255.00.

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v. On 23 October 2019, the Department of Veterans Affairs (VA) awarded Petitioner a 70 percent disability rating for a service-connected Unspecified Anxiety Disorder, effective 1 October 2019. See enclosure (23).

w. By memorandum dated 20 April 2023, the Medical/Psychiatric Advisor for the Secretary of the Navy Council of Review Boards (CORB) provided an advisory opinion (AO) for the Board's consideration. After reviewing the complete PEB file, which included Petitioner's applicable medical records during the period in question, Petitioner's personnel record, and Petitioner's post-service VA benefits and clinical records, the CORB Medical/Psychiatric Advisor opined that the preponderance of the evidence supports Petitioner's request for a disability retirement. Specifically, he found that the IPEB majority erred in basing its fitness determination on Petitioner's availability for reassignment to the MSC. This was not the PEB's role. Rather, the PEB's role is to determine whether the Service member can perform the duties associated with her office, grade, rank, and rating. The AO also noted that appointment in the MSC is regulated by reference (f), and that each specialty within the MSC has specific entry requirements that Petitioner would not necessarily have possessed. As such, the IPEB improperly assumed that Petitioner's reassignment to the MSC was feasible based solely on their speculation and not the Navy's policy. Further, the IPEB majority failed to consider Petitioner's ability to perform common military tasks, which would be required of her regardless of whether she was assigned to the Medical Corps or the MSC. Finally, the CORB Medical/Psychiatric Advisor opined that, if Petitioner had been found unfit by the PEB, it is likely that the PEB would have applied the 70 percent disability rating assigned by the VA to her Unspecified Anxiety Disorder condition per the IDES. As Petitioner most recent psychiatric encounter indicated diagnoses not substantively different from her earlier diagnoses, the AO suggested that her condition was stable and therefore would warrant placement on the Permanent Disability Retired List (PDRL). See enclosure (24).

x. By memorandum dated 24 April 2023, the CORB Director concurred with the AO provided by the CORB Medical/Psychiatric Advisor, finding that the preponderance of the evidence supports Petitioner's request for a disability retirement.⁸ Accordingly, he recommended that the Board correct Petitioner's record to reflect that, at the time of her discharge, Petitioner was medically unfit for continued service due to the following disabling condition:

Unspecified Anxiety Disorder (VA Diagnostic Code 9413), rated at 70 percent, permanent and stable, not combat related, and non-combat zone.

See enclosure (25).

CONCLUSION:

Upon careful review and consideration of all the evidence of record, the Board finds the existence of a material error warranting relief.

⁸ As the CORB oversees the PEB, the concurrence of the CORB Director with his Medical Advisor's conclusion that the IPEB erred was highly persuasive to the Board.

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The Board concurred with the findings of the CORB AO that the IPEB erred in finding Petitioner to be fit for continued service in the Navy. The two IPEB members who found Petitioner to be fit for continued service relied upon improper criteria in making this finding. Unfortunately, this error was carried forward when Petitioner's request for a FPEB hearing was denied. Per reference (c), a Service member may be considered unfit when the evidence establishes that the member, due to disability, is unable to reasonably perform the duties of their office, grade, rank, or rating; that their disability represents a decided medical risk to their health or to the welfare or safety of other members; or their disability imposes unreasonable requirements on the military to maintain or protect the Service member. Reference (d), which was in effect at the time in question, actually went further in this regard, providing that a finding of unfitness *shall* be made when the evidence establishes that the member is unable to reasonably perform the duties of her office, grade, rank, or rating.⁹ The IPEB's reliance upon the Petitioner's ability to perform administrative research tasks and inaccurate speculation that Petitioner may be able to serve as a MSC officer were not appropriate bases to find the Petitioner fit for continued service. The preponderance of the evidence clearly established that Petitioner was unable to perform the routine duties expected of a Navy Medical Corps officer due to her Unspecified Anxiety Disorder. The two IPEB members who found otherwise seemingly conceded this inability in their commentary at enclosure (10). Further, the evidence reflects that the IPEB was wrong in its assumption that Petitioner could serve as a MSC officer, as she was not necessarily eligible for such a reassignment. Additionally, the evidence suggests that the same anxiety-related symptoms which rendered Petitioner unable to perform the duties of a Medical Corps officer would also have rendered her unable to perform the duties of an MSC officer (or any other Navy officer rating for that matter).

The Board also concurred with the CORB AO conclusion that the evidence reflects that Petitioner's anxiety disorder is stable, and that the VA's disability rating of 70 percent most likely would have been applied to Petitioner's disabling condition pursuant to the IDDES if the IPEB had not erred in its fitness determination. Accordingly, the Board concurred with the recommendation of the CORB Director in enclosure (25).

RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record:

That Petitioner's naval record be corrected to reflect that she was transferred to the PDRL, effective 1 October 2019, for the following unfitting condition:

Unspecified Anxiety Disorder, VA Diagnostic Code 9413, rated at 70%, permanent and stable, not combat related (NCR), non-combat zone (NCZ). This results in a combined rating of 70%. 38 C.F.R. § 4.129 does not apply.

⁹ See paragraph 3302 of reference (d). Reference (d) was subsequently cancelled upon the issuance of its succeeding instruction on 27 June 2019.

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That all documents referencing Petitioner's proposed administrative separation and qualified resignation request, to include all endorsements, responses, recommendations, and decisions related to these actions, be removed from Petitioner's naval record.

That Petitioner be issued a new DD Form 214 reflecting that she was medically retired and transferred to the PRDL effective 1 October 2019 based upon the unfitting condition described above.¹⁰

That a copy of this record of proceedings be forwarded to the Defense Finance and Accounting Service (DFAS) to conduct an audit of Petitioner's finance records to determine what, if any, back pay and allowances may be due to Petitioner was a result of the corrections to her record directed herein.

That a copy of this record of proceedings be filed in Petitioner's naval record.

That no further corrections be made to Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above titled matter.

5. The foregoing action of the Board is submitted for your review and action.

5/31/2023

[REDACTED]

¹⁰ The Board leaves the determination of the specific entries on Petitioner's reissued DD Form 214 to the Navy Personnel Command, so long as the narrative reason for separation, separation authority, and separation code accurately reflect the corrections directed herein.

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ASSISTANT SECRETARY OF THE NAVY (MANPOWER AND RESERVE AFFAIRS)
DECISION:

[REDACTED] Board Recommendation Approved (Full Relief – I concur with the Board’s conclusion and therefore direct the relief recommended by the Board above).

___ Board Recommendation Disapproved (Deny Relief – I do not concur with the Board’s conclusion above, and therefore direct that no corrective action be taken on Petitioner’s naval record. The reason(s) for this decision is/are as follows: _____

_____)



JUL 28 2023

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